



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,260	11/30/2001	Randall H. Jamail	10659-009	3727
<div>140                      7590                      04/15/2008</div> <div>LADAS &amp; PARRY LLP</div> <div>26 WEST 61ST STREET</div> <div>NEW YORK, NY 10023</div>				
			EXAMINER	
			NEYZARI, ALI	
			ART UNIT	PAPER NUMBER
			2627	
			MAIL DATE	DELIVERY MODE
			04/15/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



Steven I. Wallach  
Ladas & Parry LLP  
26 West 61<sup>ST</sup> Street  
New York, NY 10023

In re Application of :  
Randall H. Jamail : ORDER TO  
Application No. 09/997,260 : SHOW CAUSE  
Filed: November 30, 2001 :  
Atty. Docket No.: U 105452-4 :

This is a show cause order based on the expiration of U.S. patent 5,995,457, for which the present application requests reissue.

### BACKGROUND.

1. The present application was filed on November 30, 2001, for reissue of U.S. patent 5,995,457 (the '457 patent) issued November 30, 1999.
2. The present application for reissue of the '457 patent is pending; the Image File Wrapper record reveals that a responsive amendment was filed on March 31, 2003 and a supplemental amendment was filed on February 6, 2006, prosecution of the application has not been formally closed by the mailing of an Office action.
3. The Office's financial records reveal that the 7.5 year maintenance fee due by November 30, 2007, (the end of the maintenance fee grace period), was not paid on or before November 30, 2007 (a Monday). As a result, the '457 patent expired at midnight on November 30, 2007, for failure to pay the 7.5 year maintenance fee due. \*
4. The '457 patent has expired for failure to pay the 7.5 year maintenance fee. See 1326 O.G. Number 4 (January 22, 2008).

### ORDER TO SHOW CAUSE

As pointed out above, the present reissue proceeding is for reissue of the '457 patent, and that patent has expired for failure to pay the 7.5 year maintenance fee. On January 22, 2008, a Notice of the expiration of the '457 patent was published in the *Official Gazette*. Since the '457 patent has expired for failure to pay the first maintenance fee, the Director of the USPTO does not have the authority under 35 U.S.C. § 251 to examine the application for reissue of the '457 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993). As stated in *Morgan*:

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only "for the unexpired part of the term of the original patent." Thus, when *Morgan's* original patent expired on August 19, 1992, the Commissioner was divested of

\* See MPEP § 2506, third paragraph.

his reissue authority because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393; Emphasis added]

Because the Director does not have the authority under 35 U.S.C. § 251 to continue to examine the application for reissue of the '457 patent, the Office intends to terminate the present reissue proceeding, and thereafter hold the application for reissue of the '457 patent to be an abandoned application as a matter of "housekeeping."

Applicant is hereby being provided with a period of 30 DAYS from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding.

If applicant proposes to show cause why the present reissue proceeding should not be terminated, applicant's showing must include an explanation of why the proceeding should continue in spite of the expiration of the original patent.

If applicant makes a showing, the showing will be evaluated as to whether it provides sufficient basis as to why the present reissue proceeding should not be terminated. A failure to respond to this show cause order within the 30-day period that has been set will result in the proceeding being terminated by default. If the present reissue proceeding is terminated, the application for reissue of the '457 patent will be returned to Technology Center 2600 for processing as an abandoned application.

#### CONCLUSION

1. Applicant is being provided with a period of 30 DAYS from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding.
2. Failure by applicant to respond to this show cause order within the 30-day period that has been set will result in the termination of the present proceeding by default, followed by a mailing of a Notice of Abandonment in the application for reissue of the '457 patent.
3. Jurisdiction over reissue application 09/997,260 is being retained by the Office of Patent Legal Administration, pending a response by the applicant, or the expiration of time for a response.
4. Telephone inquiries related to this decision should be directed to Krista Zele, Quality Assurance Specialist in TC 2600, at (571) 272-7288 or, in her absence, to the undersigned at (571) 272-7743.



Stephen Marcus, Legal Advisor  
Office of Patent Legal Administration